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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,405	07/24/2003	Martin Kowalski	F-7888	1066
28107	7590	09/23/2005	EXAMINER	
JORDAN AND HAMBURG LLP 122 EAST 42ND STREET SUITE 4000 NEW YORK, NY 10168			ROSENBERGER, RICHARD A	
			ART UNIT	PAPER NUMBER
			2877	

DATE MAILED: 09/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/626,405	<b>Applicant(s)</b> KOWALSKI, MARTIN	
	<b>Examiner</b> Richard A. Rosenberger	<b>Art Unit</b> 2877	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>09/04/2003</u> . | 6) <input type="checkbox"/> Other: ____  |

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1. Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the word "preferably" renders the claim indefinite because it is unclear whether the limitation following the word is, or is considered to be, part of the claimed invention. See MPEP § 2173.05(d).

Claims 3-4, dependent from claim 1, inherit this rejection from claim 1; none of the claims contains subject matter which clarifies the scope of claim 1.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Grønskov (US 6,119,353).

The reference discusses, in column 1, lines 40-61, a prior art system in which a road surface is monitored by means of a height sensor system ("at least two range finders"; column 1, lines 41-42) are installed in a measuring vehicle (column 1, lines 40-42), which can be lasers scanning systems (column 1, line 43) are used for determining the height position of the road surface (column 1, lines 42-47). Although the reference suggests that this known method "has not been found to be successful for road measurements" (column 1, lines 59-60), the reference

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also teaches that it “could possibly be used for the measurement of the defection of a railroad track” (column 1, lines 60-61). As shown in figure 1B of the reference, it is known (at least since the date of the Grønskov reference) that such optical measurements of the of the defection of a railroad track can be made by measuring the base of the rail. It would have been obvious to measure the base of the rail with the prior art discussed in the Grønskov reference because, as suggested by the Grønskov reference, the prior art system finds utility in measuring the defection of a railroad track and, as also taught by the Grønskov reference (in figure 1B), it is known that such optical measurements can be made with regard to the base of the rail.

4. Claim 2 appears to contain allowable subject matter; the art does not appear to teach or suggest the measurement of the difference in height between the center loop of an anchor clamp and the surface of an angle guiding plate as in claim 2.

Claims 3 and 4 appear to contain allowable subject matter. The art does not appear to teach or suggest making measurements both in the region of an axle under load and an axle not under load; the art teaches making measurements in a region of an axle under load (column 1, lines 45-57) and a region of the road surface which is unload (column 1, lines 43-45); there is no teaching or suggestion that, rather than an “unloaded road surface” that the measurement should be made in the region of an axle which is not under load; as shown in figures 4 and 5, it appears that what is meant in the reference by “unloaded” is a region sufficiently far from an axle. The art also does not appear to teach or suggest that use of two scanning systems in the region of each axle, one of which measures the base of a rail and the other of which measures the surface of a tie or a concrete supporting plate as in claims 3 and 4.

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Claims 2-4 would be allowable were they written in independent form including the limitations of their parent claim 1, and the rejection under 35 USC 112 above overcome.

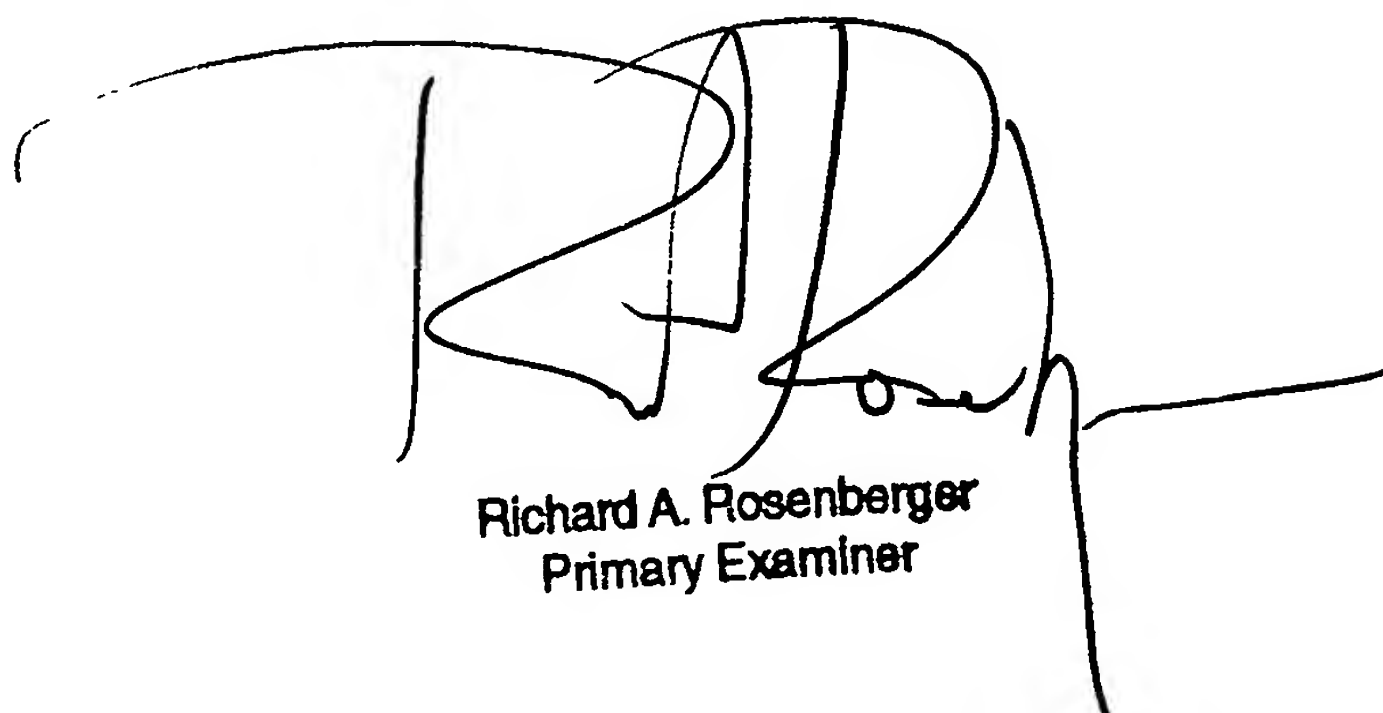
5. Wagner (US 4,040,738), Plasser et al (US 3,828,440), and Cooper (US 5,786,750) show other known railroad track measuring systems.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard A Rosenberger whose telephone number is (571) 272-2428. The examiner can normally be reached on Monday through Friday during the hours of 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley, Jr. can be reached on (571) 272-2800 ext. 77. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

R. A. Rosenberger  
22 September 2005



Richard A. Rosenberger  
Primary Examiner